

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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BILL DRAFT 2009-TD-22 [v.7] (01/27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Restore Cigarette Tax Stamps.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR PAYMENT OF CIGARETTE TAXES BY STAMP AND TO
CREATE A CRIMINAL PENALTY FOR THE COUNTERFEITING OF CIGARETTE
TAX STAMPS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.4 reads as rewritten:

"§ 105-113.4. Definitions.

The following definitions apply in this Article:

...

(3a) Duty-free transaction. – A sale or distribution of cigarettes exempt from federal excise tax pursuant to 26 U.S.C. § 5704(b) or any successor provision, or pursuant to a diplomatic or consular treaty between the United States and one or more foreign governments.

...

(4a) Importer. – A person who imports into the United States a finished cigarette sold or distributed within this State.

(4b) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, is the only person to whom the manufacturer sells its products, and is not a retail dealer. An "affiliate" is a person who directly or indirectly controls, is controlled by, or is under common control with another person.

...

(6a) Non-tax-paid cigarettes. – A package of cigarettes that does not bear a stamp as required by G.S. 105-113.19.

...

(10b) Stamp. – The indicia required to be placed on a package of cigarettes that evidence payment of the tax on cigarettes under G.S. 105-113.5, or the indicia used to indicate that the cigarettes are intended for a sale or distribution within this State that is exempt from State tax under any applicable provision of law.

...

(12a) U.S. government transaction. – A sale or distribution of cigarettes to an agency or instrumentality of the United States, including exchange and commissary services serving the armed forces of the United States.

...."

SECTION 2. G.S. 105-113.18(1) reads as rewritten:

"(1) Distributor's Report. – A distributor ~~shall~~ must file a monthly report in the form prescribed by the Secretary. The report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. The report ~~shall state the amount of tax due and shall identify any transactions to which the tax does not apply.~~ must:

- a. State the amount of the tax due.
- b. Identify any transaction to which the tax does not apply.
- c. State the quantity of cigarettes on hand on the first and last days of the calendar month immediately preceding the month in which the report is required.
- d. The amount of stamps purchased, used, and on hand during the report period.
- e. Provide any other information the Secretary requires."

SECTION 3. G.S. 105-113.19 is reenacted and reads as rewritten:

"§ 105-113.19. Secretary to provide stamps.

(a) Stamps. – The taxes levied by this Article shall be paid or payment shall ~~must~~ be evidenced by the use of stamps, except as provided in G.S. 105-113.6. Tax-exempt stamps must be used to evidence exemption from the taxes levied by G.S. 105-113.5. The Secretary shall ~~must~~ make arrangements with some manufacturer to for the manufacture of ~~taxpaid~~ cigarette tax stamps provided in this Article. The Secretary shall prescribe the form, design, denominations and such other matters as may be necessary with respect to said stamps.

(b) Sale of stamps. – The Secretary may sell such ~~stamps~~ directly to taxpayers and he may also or make arrangements for release of ~~taxpaid stamps to taxpayers by the manufacturer of said the stamps. Said manufacturer shall furnish such bond as the Secretary may deem advisable, in such amount and upon such conditions as in the opinion of the Secretary will adequately protect the State in the collection of the taxes levied by this Article.~~ Only the Secretary may sell stamps. The Secretary must sell and distribute stamps exclusively to licensed distributors.

(c) Unique serial numbers. – Each roll or sheet of stamps must have a separate and unique serial number that shall be clearly visible at the point of sale. The Secretary must keep records of which licensed distributor purchases each roll or sheet of stamps identified by serial number. If the Secretary permits distributors to purchase partial rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one distributor.

~~(b)(d)~~ (d) Payment in full shall accompany application for purchase of stamps; provided, however, a licensed distributor may purchase stamps on credit if such distributor has filed with the Secretary a bond satisfactory to the Secretary in an amount no less than the amount to be paid for said stamps and prior to the date any such credit purchases are made. Such licensed distributor shall pay for said credit purchases of stamps on or before the tenth day of the month next following the date of purchase, and the bond herein required shall be conditioned upon such payment. The bond shall be executed by the distributor as principal and by an indemnity company licensed to do business under the insurance laws of this State, as surety. ~~stamps.~~

(e) ~~A licensed distributor using a stamp metering machine as provided for in G.S. 105-113.23 may make payment upon the same terms and conditions as in the case of the purchase of stamps as set forth in subsection (b) of this section."~~

SECTION 4. G.S. 105-113.20 is reenacted and reads as rewritten:

"§ 105-113.20. Distributors to affix stamps.

(a) Licensed distributors. Only licensed distributors shall affix stamps. A licensed distributor may only affix stamps to packages of cigarettes manufactured, imported, purchased, or obtained directly from a licensed distributor who is a manufacturer or importer of cigarettes. A licensed distributor ~~shall~~must not sell, borrow, loan, buy, or exchange stamps to, from, or with any other person, ~~except as provided in G.S. 105-113.19.~~person.

(b) Non-tax-paid cigarettes. – Only licensed distributors may possess or receive non-tax-paid cigarettes. A licensed distributor who possesses or receives unstamped non-tax-paid packages of cigarettes shall must affix stamps to the packages within 48 hours of the receipt of all unstamped cigarettes, exclusive of Saturdays, Sundays, and all legal holidays of the State, and the time required by the Secretary. ~~A licensed distributor shall affix stamps to the packages prior to any and all delivered to other persons except deliveries to points outside the State, deliveries by manufacturers to licensed distributors and those deliveries which this State is prohibited from taxing under the Constitution or the statutes of the United States, selling, distributing, or shipping the cigarettes to any other person.~~ A licensed distributor who is a manufacturer or importer of cigarettes may sell, distribute, or ship non-tax-paid cigarettes to another licensed distributor, and further provided that a licensed distributor may ship or cause to be delivered non-tax-paid cigarettes to a facility, wherever located, owned by such distributor.

(c) Packages. – Stamps must be affixed by licensed distributors:

- (1) In a denomination that at least equals the tax due on cigarettes in the package, if the cigarettes are subject to tax under G.S. 105-113.5.
- (2) On the smallest package of cigarettes that will be handled, sold, used, consumed, or distributed in this State.
- (3) To the bottom of each individual package of cigarettes in a manner so that the stamp cannot be removed from the package without being mutilated or destroyed."

SECTION 5. G.S. 105-113.21(a1) reads as rewritten:

"(a1) Discount. – ~~A distributor who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.~~ On sales of stamps, the Secretary must allow a discount per stamp as compensation for the services and expenses of the licensed distributor in handling and affixing such stamps to packages of cigarettes. The discount per stamp shall be two percent (2%) of the total tax due on each pack of cigarettes."

SECTION 6. G.S. 105-113.25 is reenacted and reads as rewritten:

"§ 105-113.25. Redemption and refund.

The Secretary shall redeem any unused or mutilated, but identifiable, stamps that any distributor ~~may present~~presents for redemption, and refund therefore the face value of ~~said~~the stamps, less the discount allowed at the time of the purchase of the stamps by ~~said~~the distributor. In the event any stamped cigarettes are shipped out of this State, or are sold to those agencies or instrumentalities which this State is prohibited from taxing under the Constitution or statutes of the United States, by any distributor, a refund of the face value of the ~~said~~said stamps less the discount allowed by the Secretary at the time of the purchase of the stamps by ~~said~~the distributor, shall be made upon the application of the distributor on forms prescribed by the Secretary together with such evidence and proof of sale as the Secretary shall require."

SECTION 7. G.S. 105-113.27 is amended by adding a new subsection to read:

"(d) Only a licensed distributor may ship or otherwise cause to be delivered non-tax-paid cigarettes into or from this State. Any person that ships or otherwise causes to be delivered non-tax-paid cigarettes into, within, or from this State must ensure the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the cosignor or seller, the true name and address of the consignee or purchaser, and

the quantity by brand style of the cigarettes transported, provided that this section shall not be construed as to impose any requirement or liability upon any common or contract carrier.

(e) The receipt, shipment, or delivery of non-tax-paid cigarettes in a duty-free transaction or a U.S. government transaction shall not constitute a violation of this section "

SECTION 8. G.S. 105-113.31(b)(4) reads as rewritten:

"(4) Unless the claimant can show that the non-tax-paid cigarettes seized were not transported in violation of this Part and that the property seized belongs to the claimant or that in the case of property other than cigarettes, the property was used in transporting non-tax-paid cigarettes in violation of this Part without the claimant's knowledge or consent, with the right on the part of the claimant to have a jury pass upon this claim, the court shall order a sale by public auction of the property ~~seized, and the seized with the exception of the contraband cigarettes.~~ The officer making the sale, after deducting the cost of the tax due, which the officer shall pay upon sale, expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens according to their priorities, which are established, by intervention or otherwise, at the hearing or in another proceeding brought for the purpose as being bona fide and as having been created without the lien or having any notice that the vehicle or vessel was being used for the unlawful transportation of non-tax-paid cigarettes, and shall pay the balance of the proceeds to the State Treasurer for the General Fund. All contraband cigarettes seized by this State must be destroyed. The Secretary may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect the contraband cigarettes, in order to assist the Secretary in any investigation regarding the cigarettes."

SECTION 9. G.S. 105-113.31(b)(5) reads as rewritten:

"(5) All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one is found claiming the ~~cigarettes, or the vehicle or vessel,~~ then the ~~taking of the cigarettes, vehicle, vehicle~~ or vessel, along with a description, shall be advertised in a newspaper having circulation in the county where the items were taken, once a week for two weeks and by notices posted in three public places near the place of seizure, and if no claimant appears within ten days after the last publication of the advertisement, the property shall be sold, and the proceeds, after deducting the expenses and costs, shall be paid to the State Treasurer for the General Fund. All cigarettes seized by this State must be destroyed. The Secretary may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist the Secretary in any investigation regarding such cigarettes."

SECTION 10. G.S. 105-113.34 as in effect on December 31, 1993 is reenacted and reads as rewritten:

"§105-113.34. Forging or counterfeiting revenue stamps.

Any person who falsely or fraudulently makes, forges, alters or counterfeits, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited, any stamps prepared or prescribed the Secretary under the authority of this Article, or who knowingly and willfully utters, publishes, passes or tenders as true, any such false, altered, forged or counterfeited stamps for the purpose of evading the tax levied by this Article, shall be guilty of a Class H felony, and upon conviction thereof shall be fined which may include a fine

1 not more than two thousand dollars (\$2,000) or imprisoned in the State prison for a term of not
2 more than five years, or both, in the discretion of the court. (\$2,000).

3 If any person secures, manufactures or causes to be secured, or manufactured, or has
4 in his possession any stamp or any counterfeit impression device not prescribed or authorized
5 by the Secretary, such person shall be guilty of a felony and subject to the punishment above
6 provided for in the first paragraph of this section."

7 **SECTION 11.** This act becomes effective January 1, 2011.
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